

INFORMATION BROCHURE FOR APPLICANTS

BOARD OF ZONING/SUBDIVISION APPEALS

**COUNTY OF YORK
YORKTOWN, VIRGINIA
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YORK COUNTY BOARD OF ZONING/SUBDIVISION APPEALS

INTRODUCTION

This brochure explains the zoning appeals process for York County as well as your rights and responsibilities in filing an appeal. Helpful suggestions are provided to assist you, or your representative, to prepare an application and presentation for the Board.

ZONING

The power to zone stems from the inherent power vested by the State General Assembly in the York County Board of Supervisors. The zoning regulations for York County have been enacted by the Board of Supervisors in the form of Zoning and Subdivision Ordinances. The most recent Zoning Ordinance was adopted June 28, 1995, and the Subdivision Ordinance was approved October 17, 1991, and revised through November 1, 1995.

The general purpose of zoning is to control and order the growth and development of York County in accordance with the Comprehensive Plan. The Comprehensive Plan is required by State law to be updated every five years.

WHO IS THE ZONING ADMINISTRATOR AND WHAT DOES HE DO?

The Zoning Administrator, a member of the York County governmental staff, is the individual authorized to administer, interpret and enforce the Zoning Ordinance on behalf of the Board of Supervisors. The Zoning Administrator has the authority and power to order, in writing, the remedy of any condition found in violation of the Ordinance and to bring legal action to ensure compliance with its provisions should that become necessary. The Zoning Administrator's authority is strictly defined. The Administrator, by law, does not have discretionary powers and therefore, can only approve a request that clearly conforms to the requirements of the Zoning Ordinance. This provision of the Ordinance is deliberate in that it is designed to prevent favoritism, unequal treatment to landowners in similar circumstances, and other abuses which stem from the unfettered exercise of administrative powers.

WHAT HAPPENS WHEN UNIQUE CIRCUMSTANCES OCCUR?

The General Assembly recognized that zoning regulations cannot be written to accommodate every set of circumstances which arise when the Board of Supervisors attempts to plan and control the use of land. That is, a zoning ordinance cannot provide for all conceivable situations to which it must apply. There are times when an interpretation is needed to determine if a variance in the application of specific terms of the zoning ordinance is appropriate and justified. Provisions must be made to balance the strict application of the ordinance with the purpose and intent established by the ordinance. Such judgments are the responsibility of the Board of Zoning Appeals (BZA). The powers and duties of the Board of Zoning Appeals are discussed in the following pages.

WHAT IS THE BOARD OF ZONING APPEALS?

The Board of Zoning Appeals (BZA) is a semi-judicial body established by State law and County Ordinance to provide relief in special circumstances where the exact application of the terms of the ordinance would be unduly restrictive and cause an undue hardship. Without this body to decide on such matters, solutions to unique development problems would have to be accomplished by numerous detailed amendments to the ordinance or through a lawsuit. Therefore, the function of the BZA is to hear and decide upon the interpretation and the application of the provisions of the zoning ordinance in these cases. Although the BZA has certain discretionary powers in making its decisions, these powers have definite limits. The BZA must always abide by and comply with the powers granted to it by the Zoning Ordinance and the State enabling act.

WHO ARE THE MEMBERS OF THE BOARD OF ZONING APPEALS?

The Board of Zoning Appeals consists of five residents of York County appointed by the Judge of the Circuit Court. One member is appointed each year for a term of five years. There is no limit on the number of terms that a member may serve. A member may be removed by the court for just cause upon written charges and after a public hearing. Owing to the care exercised by the court in its appointments to the BZA, it has never become necessary to remove a member from the York County Board.

WHAT IS THE BZA EMPOWERED TO DO?

The Board of Zoning Appeals is empowered by Section 15.1-2280 - 15.2-2315 of the State Code and Article IX Section 24.1-901 of the Zoning Ordinance to:

1. Hear and decide on variances to the Zoning Ordinance.
2. Hear and decide on appeals from any order, requirement, decision or determination made by the Zoning Administrator in the enforcement or interpretation of the zoning ordinance. (The Zoning Administrator is responsible for interpreting the terms and conditions that are not specifically addressed in the Ordinance. The Administrator's decision must be issued in writing and is filed and available for review. The written interpretation must include the rationale for the decision and cite specific policies of the Board of Supervisors as expressed in the adopted Comprehensive Plan that support the interpretation.)
3. Hear and decide on appeals and applications for a variance to the Subdivision Ordinance.

WHAT IS A VARIANCE?

A variance permits a reasonable deviation from the provisions in the zoning ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance is not shared generally by other properties, and provided that such a variance is not contrary to the intended spirit and purpose of the ordinance, and if granted, would result in substantial justice being done. A granted variance becomes a vested right that is transferred with the property.

WHAT IS THE PURPOSE OF A VARIANCE?

A variance is designated as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner beneficial use of the land and thus amount to confiscation. Thus a variance can render justice in unique and individual cases of unnecessary or unreasonable hardship resulting from a literal application of the zoning ordinance.

WHERE DO I FILE MY APPLICATION?

File your completed application with the BZA Secretary by close of business on Friday, four (4) weeks prior to the scheduled meeting date. The Board meets on the 4th Thursday of each month. A schedule of meeting dates and application deadline dates for the current year can be obtained from the Secretary.

IS THERE A FILING FEE?

Yes. There is a non-refundable filing fee of \$250.00 which must be paid when you file your application.

WHAT HAPPENS NEXT?

The staff will review the application to verify its completeness. Once the application is accepted, it will be placed on the agenda for the meeting corresponding to the application deadline date. Legal notices advertising the public hearing will be published in the local paper once a week for two consecutive weeks. In addition, the Secretary will notify, by letter, all adjacent property owners of your request.

You will receive notice of the date, time, and place for the public hearing approximately two weeks prior to the meeting. The secretary to the Board will prepare a staff report for the Board members concerning your request, which will include pertinent code sections and factual statements. The applicant will receive a copy of this report approximately one week prior to the meeting.

Members of the Board normally inspect your property prior to the public hearing to better appreciate the circumstances occasioning your appeal and the land or structure involved. However, the members do not generally meet with the applicant during the inspection or prior to the public hearing.

WHAT HAPPENS AT THE PUBLIC HEARING?

The Chairman will call the meeting to order, welcome the attendees, have the Board attendance taken by the Secretary and then introduce the Board members, secretary and legal advisor. Following this, the Chairman will present procedural information to aid applicants and interested parties in their presentations. This includes a brief description of the BZA and its duties, an outline of the procedure used for the public hearing and a description of the findings required for any case action before the Board.

For each application the Secretary will provide a verbal summary of the application and present an overhead projection of area zoning maps as well as pertinent other visual data. The Chairman will then open the public hearing and the applicant will be provided the opportunity to appear in his own behalf, or be represented by an agent. County representatives and the general public will then be given an opportunity to express their views. The applicant will then be given an opportunity for a rebuttal or summary. The Chairman will close the public hearing and the Board will deliberate and provide a decision in the form of a resolution approved by at least 3 members of the Board.

Applications are considered by the Board in the order that they are formally received by the Secretary.

DO I HAVE TO ATTEND THE PUBLIC HEARING?

There is no requirement that says you have to be there, but attendance by you (or your representative) is highly recommended.

DO I NEED A LAWYER OR OTHER PROFESSIONAL REPRESENTATIVE?

There is no "yes" or "no" answer to this question. Many individual property owners appear in their own behalf, but if you are more comfortable with professional representation to assist with your application and answer questions on your behalf, that is certainly satisfactory.

HOW LONG DO I HAVE TO WAIT FOR A DECISION?

As soon as the public hearing for your request is ended, the Board will start its deliberating and begin weighing the evidence presented. If the appeal is extremely complex, the Board may vote to continue the public hearing until another meeting, but in the great majority of cases the applicant can expect a decision that same night.

WILL THE COUNTY SUPPORT MY APPLICATION?

The decision of the County to recommend the granting or denial of an application is made by the Zoning Administrator in consultation with his/her staff. This decision is not made until after the application has been filed and advertised for public hearing. Generally, the Zoning Administrator's interpretation of the Ordinance follows strict guidelines and he/she only recommends the granting of a variance for those applications that very clearly meet every requirement, in his/her opinion, to the fullest extent.

WILL THE LACK OF SUPPORT BY THE ZONING ADMINISTRATOR WEIGH HEAVILY AGAINST APPROVAL OF MY APPLICATION BY THE BOARD?

As noted previously, the members of the Board are appointed by the Judge of the Circuit Court and the Board is a quasi-judicial body, therefore the Board has no allegiance to automatically follow the recommendation of the Zoning Administrator. In considering an application, the Board will take all aspects of a case into consideration before reaching a final decision. The recommendation of the Zoning Administrator is only one of many things considered. Those factors

that determine an “unnecessary hardship” are unique for each application (see discussion of “unnecessary hardship” on Page 8). From a strictly historical perspective, the Board considered 16 applications in 1998- 9 were granted and 7 were denied. In 1997 the Board considered 27 applications- 16 were granted and 11 were denied.

WHAT ARE SOME OTHER THINGS I SHOULD DO?

Review the following standards or guidelines the Board is required to use in rendering a decision and consider how these affect your request. A variance will be evaluated based on the following criteria (Section 24.1-900) from the Zoning Ordinance.

For a variance:

According to Section 15.2-2309 of the Code of Virginia, which pertains to powers and duties of boards of zoning appeals, in order to grant a variance the Board must find:

1. That the ordinance effectively prohibits or unreasonably restricts the use of the property, or that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation (as distinguished from a special privilege or convenience sought by the applicant) because of a condition which is unique to the particular parcel of land (size, shape, topography, use of adjoining property).
2. That the strict application of the ordinance would produce undue hardship.
3. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
4. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
5. That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

For an appeal:

1. The Board will examine the language of the ordinance to determine whether the language is clear or is subject to more than one interpretation.
2. If, in the opinion of the Board, the language is clear, the Board will require the applicant to show that his case is not within the intent of the regulation. In these cases, the Board will assume that the administrative decision is correct and the applicant will bear the burden of proof.
3. If the language of the ordinance is unclear, the Board will inquire as to whether the decision made by the official involved is consistent with previous administrative determinations in similar situations.

4. If the administrative decision is consistent with prior decisions, the applicant will prevail only if the administrative decision is not within the intent and purpose of the ordinance and, therefore, so arbitrary or unreasonable that the Board of Zoning Appeals must substitute its own interpretation and overturn the administrative decision. If the administrative decision is both consistent and reasonable, the Board will uphold it.
5. If the administrative decision is inconsistent with prior decisions, the Board will carefully examine all factors involved to ensure that the appearance of an arbitrary decision is overcome by a legitimate attempt to further the intent and purpose of the ordinance.

In applying these guidelines, the Board will consider any pertinent factors that arise during the public hearing.

IF MY APPLICATION IS DENIED, CAN THE DECISION BE APPEALED?

Yes, if you disagree with the Board's decision, you have the right to appeal to the Circuit Court. You must exercise your right to appeal no later than 30 days after the Board has filed its decision.

CAN I ASK THE BOARD TO RECONSIDER MY APPLICATION?

If your application is denied, the Ordinance does not permit the same application to be considered by the Board for one (1) year from the date of action, except by unanimous vote of the Board members. Once a decision is made by the Board, only the Circuit Court has the authority to act.

OTHER PERTINANT INFORMATION

Exhibits and photographs can be beneficial to the graphical presentation of your request.

Petitions and written statements of support from adjacent property owners can be submitted. These items will be held by the Secretary at least 30 days. The original documents can be returned after such time, upon the request of the applicant.

A decision of the BZA is not bound by precedent as in a court of law. Each case has its own unique set of facts and the Board must determine the merits of your case on the information that is presented at the public hearing.

It is strongly recommended that you, your representative, or local elected official not attempt to contact the members of the Board regarding the application prior to the public hearing. The decision of the Board will be based only on the facts presented at the public hearing where all members, as well as the public at large, have an opportunity to consider the information presented. Decisions of the Board are based on the merits of each case and political issues are never a factor.

There is no exact definition of an "unnecessary hardship". Some guidelines, based on legal precedent, for applying the concept of unnecessary hardship are:

1. The premises cannot be used in a manner permitted by the zoning ordinance unless the variance is granted.
2. A strict application of the terms of the zoning ordinance precludes its use for any purpose to which the land is reasonably adopted.
3. Inability to put the property to its most profitable use does not constitute "unnecessary hardship".
4. Mere inconvenience to the applicant is not sufficient ground for determining an "unnecessary hardship".

In granting a variance the BZA may not make any decision that is contrary to the purpose and intent of the Zoning Ordinance. For example, the BZA has no authority to permit a business to be established in a residential district or a residence to be established in a business or industrial district. To do so would require an amendment to the Ordinance which requires the Board of Supervisors approval.

If property is being purchased subject to obtaining a variance, the contract should give you the right to apply for a variance in the name of the seller.